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9	BOARD OF REGISTERED NURSING		
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11	STATE OF CAL	HOMM	
.12	In the Matter of the Accusation Against:	Case No. 2009 - 713	
13	SEAN WILLIAM PIERCE 200 Adobe Lane	ACCUSATION	
14	Tracy, CA 95376	ACCUSATION	
15	Registered Nurse License No. 569251		
16	Respondent.		
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18	Complainant alleges:		
19	PARTIE	<u>es</u>	
20	1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation		
21	solely in her official capacity as the Executive Officer of the Board of Registered Nursing		
22	("Board"), Department of Consumer Affairs.		
23	2. On or about July 26, 2000, the Board issued Registered Nurse License		
24	Number 569251 to Sean William Pierce ("Responde	ent"). Respondent's registered nurse license	
25	was in full force and effect at all times relevant to th	e charges brought herein and will expire on	
26	March 31, 2010, unless renewed.		
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-1	STATUTORY PROVISIONS		
2	3. Business and Professions Code ("Code") section 2750 provides, in		
3	pertinent part, that the Board may discipline any licensee, including a licensee holding a		
4	temporary or an inactive license, for any reason provided in Article 3 (commencing with section		
5	2750) of the Nursing Practice Act.		
6	4. Code section 2764 provides, in pertinent part, that the expiration of a		
7	license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding		
8	against the licensee or to render a decision imposing discipline on the license. Under Code		
9	section 2811, subdivision (b), the Board may renew an expired license at any time within eight		
10	years after the expiration.		
11	5. Code section 2761 states, in pertinent part:		
12	The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:		

- (a) Unprofessional conduct . . .
- (f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof . . .
 - Code section 2762 states, in pertinent part: 6.

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- (b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- (c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof . . .

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7. Code section 2765 states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

8. California Code of Regulations, title 16, section 1444 states, in pertinent part:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare . . .

COST RECOVERY

9. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

- 10. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (f), in that Respondent was convicted of crimes which are substantially related to the qualifications, functions, and duties of a registered nurse, as follows:
- a. On or about April 23, 2007, in the criminal proceeding titled *People v.*Sean William Pierce (Super. Ct. San Joaquin County, 2007, Case No. TM110187A), Respondent was convicted by the court on his plea of nolo contendere to violating Vehicle Code section 23103, subdivision (a) ("wet and reckless" driving per Vehicle Code section 23103.5, a misdemeanor). The circumstances of the crime are as follows: On or about February 27, 2007, at approximately 2148 hours, an officer with the Tracy Police Department ("PD") contacted

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Respondent at Great Plate Bar & Grill located at N. Central Avenue, Tracy, after the officer conserved Respondent parking his vehicle on the sidewalk. Respondent had exited his vehicle and was having difficulty maintaining his balance. The officer asked Respondent to step outside with him, and noticed that Respondent had blood shot, watery eyes, slurred speech, and the odor of alcohol on his breath. The officer asked Respondent if he had been drinking. Respondent stated that he had two glasses of wine between 1800 and 1930 hours. Respondent agreed to perform a series of field sobriety tests ("FST"). During one of the tests, Respondent stated that he was drunk and had come to the bar "to get two shots, then drive home". Based on Respondent's objective symptoms of intoxication and his failed FST's, the officer placed Respondent under arrest for driving under the influence. After he was transported to the Tracy PD, Respondent completed a breath test; Respondent's results were .09% and .09%.

b. On or about January 31, 2008, in the criminal proceeding titled *People v. Sean William Pierce* (Super. Ct. Alameda County, 2008, Case No. 224280), Respondent was convicted by the court on his plea of no contest to violating Vehicle Code section 23103, subdivision (a) (reckless driving, a misdemeanor). The incident on which the conviction is based occurred on or about April 13, 2007.

SECOND CAUSE FOR DISCIPLINE

(Use of Alcoholic Beverages to an Extent or in a Manner Dangerous or Injurious to Oneself or Others)

Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (b), in that Respondent consumed alcoholic beverages to an extent or in a manner dangerous or injurious to himself and others, as set forth in subparagraph 10 (a) above.

THIRD CAUSE FOR DISCIPLINE

(Conviction Related to the Consumption of Alcoholic Beverages)

12. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (c), in that on or about April 23, 2007, Respondent was convicted of a criminal

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. 1	offense involving the consumption of alcoholic beverages, as set forth in subparagraph 10 (a)		
2	above.		
3	<u>PRAYER</u>		
4	WHEREFORE, Complainant requests that a hearing be held on the matters herein		
5	alleged, and that following the hearing, the Board of Registered Nursing issue a decision:		
6	1. Revoking or suspending Registered Nurse License Number 569251, issued		
7	to Sean William Pierce;		
8	2. Ordering Sean William Pierce to pay the Board of Registered Nursing the		
9	reasonable costs of the investigation and enforcement of this case, pursuant to Business and		
10	Professions Code section 125.3;		
11	3. Taking such other and further action as deemed necessary and proper.		
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13	DATED: 3(23)09		
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15	RUTH ANN TERRY, M.P.H., R.N.		
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17	Department of Consumer Affairs State of California		
18	Complainant		
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phd; 10/27/2008